

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: S3/5/03 S3/11/03 S3/18/03

A Bill

SENATE BILL 313

5 By: Senators Malone, *J. Bookout, Capps, Higginbothom, Horn, G. Jeffress, J. Jeffress, Miller, Trusty,*
6 *Womack*
7
8

For An Act To Be Entitled

10 AN ACT TO PROVIDE FOR THE REGULATION AND
11 LICENSING OF PHARMACY BENEFIT MANAGERS; TO
12 PROVIDE FOR CERTAIN POWERS AND DUTIES OF CERTAIN
13 STATE AGENCIES AND OFFICERS; TO PRESCRIBE
14 PENALTIES; AND FOR OTHER PURPOSES.
15

Subtitle

16 TO PROVIDE FOR THE REGULATION AND
17 LICENSING OF PHARMACY BENEFIT MANAGERS.
18
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code Title 17, Chapter 92, is amended to add an
24 additional subchapter to read as follows:

25 17-92-1101. Title.

26 This subchapter shall be known and may be cited as the "Arkansas
27 Pharmacy Benefit Management Regulation Act".
28

29 17-92-1102. Purpose and intent.

30 (a)(1) This subchapter establishes standards and criteria for the
31 regulation and licensing of pharmacy benefit managers.

32 (2) The purpose of this subchapter is to:

33 (A) Promote, preserve, and protect the public health,
34 safety, and welfare through effective regulation and licensing of Pharmacy
35 Benefit Managers;

36 (B) Provide for certain powers and duties for certain



1 state agencies and officers; and

2 (C) Prescribe penalties for violations of this subchapter.

3 (b) A pharmacy benefit manager is subject to this subchapter if the
4 pharmacy benefit manager provides claims processing services, other
5 prescription drug or device services, or both, to patients who are residents
6 of Arkansas.

7 (c) No pharmacy benefit manager shall do business or provide services
8 in Arkansas unless the pharmacy benefit manager is in full compliance with
9 this subchapter.

10
11 17-92-1103. Definitions.

12 For purposes of this subchapter:

13 (1) "Board" means the Arkansas State Board of Pharmacy;

14 (2) "Cease and desist order" means an order of the board or
15 commissioner prohibiting a pharmacy benefit manager, other person, or entity
16 from continuing a particular course of conduct which violates this subchapter
17 or rules adopted under this subchapter;

18 (3) "Claims processing services" means the administrative services
19 performed in connection with the processing and adjudication of claims
20 relating to pharmacist's services, including, but not limited to, making
21 payments to pharmacists and pharmacies;

22 (4) "Commissioner" means the Insurance Commissioner;

23 (5)(A) "Controlling interest" means that one (1) person, business, or
24 other entity directly or indirectly, owns, controls, holds with the power to
25 vote, or holds proxies representing fifty percent (50%) or more of the voting
26 interests of another person, business, or other entity.

27 (B) "Common controlling interest" means that a controlling
28 interest in two persons, businesses, or other entities is held by the same
29 person, business, or other entity;

30 (6) "Maintenance drug" means a drug prescribed by a practitioner who
31 is licensed to prescribe drugs and used to treat a medical condition for a
32 period greater than thirty (30) days;

33 (7) "Multi source drug" means a drug that is stocked and available
34 from three (3) or more suppliers;

35 (8) "Other prescription drug or device services" means services other
36 than claims processing services, provided directly or indirectly by a

1 pharmacy benefit manager, whether in connection with or separate from claims
2 processing services, including, but not limited to:

3 (A) Negotiating rebates, discounts, or other financial
4 incentives and arrangements with drug companies;

5 (B) Disbursing or distributing rebates;

6 (C) Managing or participating in incentive programs or
7 arrangements for pharmacist's services;

8 (D) Negotiating or entering into contractual arrangements with
9 pharmacists, pharmacies, or both;

10 (E) Developing formularies;

11 (F) Designing prescription benefit programs; or

12 (G) Advertising or promoting claims processing services or other
13 prescription drug or device services;

14 (9) "Pharmacist" means an individual licensed as a pharmacist by the
15 board;

16 (10) "Pharmacist's services" means the practice of pharmacy as defined
17 in § 17-92-101;

18 (11) "Pharmacy" means pharmacy as defined in § 17-92-101;

19 (12)(A) "Pharmacy benefits manager" means a person, business or other
20 entity, and any wholly or partially owned or controlled subsidiary of a
21 pharmacy benefits manager, that provides claims processing services, other
22 prescription drug or device services, or both, to third parties.

23 (B) "Pharmacy benefits manager" does not include:

24 (i) Health care facilities licensed in Arkansas;

25 (ii) Healthcare professionals licensed in Arkansas;

26 (iii) Pharmacies licensed in Arkansas;

27 (iv) Insurance companies licensed in Arkansas;

28 (v) Health maintenance organizations licensed in Arkansas;

29 (vi) Unions; or

30 (vii) Consultants who only provide advice as to the
31 selection or performance of a pharmacy benefits manager.

32 (13) "Single source drug" means a drug that is not a multi source
33 drug;

34 (14)(A) "Third parties" means any person, business, or other entity
35 other than a pharmacy benefits manager.

36 (B) "Third parties" does not include:

1 (i) A person, business, or other entity that holds a
2 controlling interest in the pharmacy benefits manager;

3 (ii) A person, business, or other entity that shares
4 common controlling interest with the pharmacy benefits manager;

5 (iii) A policyholder, insured, member, or enrollee of an
6 insurance company licensed in Arkansas or a health maintenance organization
7 licensed in Arkansas to the extent that claims processing services, other
8 prescription drug or device services, or both, are provided to the
9 policyholder, insured, member, or enrollee by a person, business, or other
10 entity in which the insurance company or health maintenance organization
11 holds a controlling interest or that shares common controlling interest with
12 the insurance company or health maintenance organization; or

13 (iv) The Arkansas Comprehensive Health Insurance Pool to
14 the extent that claims processing services, other prescription drug or device
15 services, or both, are provided to it by a person, business, or other entity
16 in which an insurance company licensed in Arkansas or health maintenance
17 organization licensed in Arkansas holds a controlling interest or that shares
18 common controlling interest with the insurance company or health maintenance
19 organization; and

20 (15) "Usual and customary price" means the price that a pharmacist or
21 pharmacy would have charged cash-paying patients, excluding patients where
22 reimbursement rates are set by contract, for the same services on the same
23 date.

24
25 17-92-1104. Certificate of authority.

26 (a)(1) No person or organization shall establish, operate, or do
27 business in Arkansas as a pharmacy benefits manager in Arkansas without
28 obtaining a certificate of authority from the Arkansas State Board of
29 Pharmacy in accordance with this subchapter and all applicable federal and
30 state laws.

31 (2)(A) A pharmacy benefits manager doing business in Arkansas
32 shall obtain a certificate of authority from the board within one hundred
33 twenty (120) days of the effective date of this subchapter and every two (2)
34 years thereafter.

35 (B) The certificate of authority shall expire on December
36 31 in the year following the year the certificate of authority was first

1 issued, and then may be renewed for successive two-year periods.

2 (b)(1) Any organization or person may apply to the board to obtain a
3 certificate of authority to establish and operate a pharmacy benefits manager
4 under this subchapter.

5 (2) A nonrefundable application fee of three hundred dollars
6 (\$300), payable to the board, shall accompany each application for a
7 certificate of authority and each application for renewal of a certificate of
8 authority.

9 (c) The board shall not issue a certificate of authority to any
10 pharmacy benefits manager until the board is satisfied that the pharmacy
11 benefits manager:

12 (1) Holds a current license issued by the commissioner to do
13 business in Arkansas as a pharmacy benefits manager;

14 (2) Is ready and able to arrange for pharmacist's services in
15 Arkansas;

16 (3) Meets the requirements set forth in this subchapter and in
17 rules adopted under this subchapter; and

18 (4) Is in compliance with all applicable state and federal laws
19 and regulations.

20 (d) The board may suspend or revoke any certificate of authority
21 issued to a pharmacy benefits manager under this subchapter, deny an
22 application for a certificate of authority to an applicant, or deny an
23 application for renewal of a certificate of authority if it finds that:

24 (1) The pharmacy benefits manager is operating materially in
25 contravention of:

26 (A) Its application or other information submitted as a
27 part of its application for a certificate of authority or renewal of its
28 certificate of authority; or

29 (B) Any condition imposed by the board with regard to the
30 issuance or renewal of its certificate of authority;

31 (2) The pharmacy benefits manager does not arrange for
32 pharmacist's services;

33 (3) The pharmacy benefits manager has failed to continuously
34 meet the requirements for issuance of a certificate of authority as set forth
35 in this subchapter, or any rules adopted under this subchapter;

36 (4) The pharmacy benefits manager has otherwise failed to

1 substantially comply with this subchapter or any rules adopted under this
2 subchapter;

3 (5) The continued operation of the pharmacy benefits manager may
4 be hazardous to patients; or

5 (6) The pharmacy benefits manager has failed to substantially
6 comply with any applicable state or federal law or regulation.

7 (e)(1) When the certificate of authority of a pharmacy benefits
8 manager is revoked, the manager shall:

9 (A) Proceed, immediately following the effective date of
10 the order of revocation, to wind up its affairs; and

11 (B) Conduct no further business except as may be essential
12 to the orderly conclusion of its affairs.

13 (2) The board may permit any further operation of the pharmacy
14 benefits manager as the board may find to be in the best interest of patients
15 to the end that patients will have the greatest practical opportunity to
16 obtain pharmacist's services.

17
18 17-92-1105. License to do business.

19 (a)(1) No person or organization shall establish or operate a pharmacy
20 benefits manager in Arkansas without first obtaining a license from the
21 commissioner in accordance with this subchapter and all applicable federal
22 and state laws.

23 (2) A pharmacy benefits manager doing business in Arkansas shall
24 obtain a license from the commissioner within sixty (60) days after the
25 effective date of this subchapter and each year thereafter.

26 (b)(1) An application for a license to operate in Arkansas as a
27 pharmacy benefits manager shall be in a form prescribed by the commissioner,
28 and shall be verified by an officer or authorized representative of the
29 pharmacy benefits manager.

30 (2) The application shall include at least the following:

31 (A) All organizational documents including but not limited
32 to, articles of incorporation, bylaws, and other similar documents and any
33 amendments;

34 (B) The names, addresses, and titles of individual
35 executives and managers responsible for the business and services provided,
36 including, all claims processing services and other prescription drug or

1 device services;

2 (C) The names, addresses, titles, and qualifications of
3 the members and officers of the board of directors, board of trustees, or
4 other governing body or committee, or the partners or owners in case of a
5 partnership, other entity, or association;

6 (D) A detailed description of the claims processing
7 services and other prescription drug or device services provided or to be
8 provided;

9 (E) The name and address of the agent for service of
10 process in Arkansas;

11 (F) Financial statements for the current and the preceding
12 year, showing the assets, liabilities, direct or indirect income, and any
13 other sources of financial support sufficient as deemed by the commissioner
14 to show financial stability and viability to meet its full obligations to
15 pharmacies and pharmacists;

16 (G) A bond in an amount determined by the commissioner by
17 rule to ensure that funds received by the pharmacy benefits manager for
18 pharmacist's services are, in fact, paid to appropriate pharmacies and
19 pharmacists.

20 (c) The commissioner shall not issue an annual pharmacy benefits
21 manager license to do business in Arkansas to any pharmacy benefits manager
22 until the commissioner is satisfied that the pharmacy benefits manager has:

23 (1) Paid all fees, taxes, and charges required by law;

24 (2) Filed a financial statement or statements and any reports,
25 certificates, or other documents the commissioner considers necessary to
26 secure a full and accurate knowledge of the pharmacy benefits manager's
27 affairs and financial condition;

28 (3)(A) Established its solvency; and

29 (B) Satisfied the commissioner that the pharmacy benefits
30 manager's financial condition, method of operation, and manner of doing
31 business make it possible for the pharmacy benefits manager to meet its
32 obligations to pharmacies and pharmacists;

33 (4) Otherwise complied with all the requirements of law; and

34 (5) Obtained a bond in an amount determined by the commissioner
35 to ensure that funds received by the pharmacy benefits manager for
36 pharmacist's services are, in fact, paid to appropriate pharmacies and

1 pharmacists.

2 (d)(1) The annual pharmacy benefits manager's license shall be in
3 addition to the certificate of authority issued by the Arkansas State Board
4 of Pharmacy.

5 (2) A nonrefundable license application fee of five hundred
6 dollars (\$500) shall accompany each application for a license to transact
7 business in Arkansas.

8 (3)(A) The fee shall be collected by the commissioner and
9 deposited as special revenues in the State Treasury to the credit of the
10 Pharmacy Benefit Managers Licensing Fund which is created on the books of the
11 Auditor of State, Treasurer of State, and Chief Fiscal Officer of the State.

12 (B) The fund shall be used to pay the expenses for the
13 regulation, supervision, and examination of all entities subject to
14 regulation under this subchapter.

15 (e) The pharmacy benefits manager license shall be signed by the
16 commissioner or an authorized agent of the commissioner and shall expire one
17 (1) year after the date the license becomes effective.

18 (f)(1) A pharmacy benefits manager transacting business in Arkansas
19 shall obtain an annual renewal of its license from the commissioner.

20 (2) The commissioner may refuse to renew the license of any
21 pharmacy benefits manager or may renew the license, subject to any
22 restrictions considered appropriate by the commissioner, if the commissioner
23 finds that the pharmacy benefits manager has not satisfied all the conditions
24 stated in this subchapter.

25 (3)(A) Before denying renewal of a license, the commissioner
26 shall provide the pharmacy benefits manager:

27 (i) At least thirty (30) days' advance notice of the
28 denial; and

29 (ii) An opportunity to appear at a formal or
30 informal hearing.

31 (B) The commissioner and the pharmacy benefits manager may
32 jointly waive the required notice.

33
34 17-92-1106. Rules.

35 (a) The Arkansas State Board of Pharmacy may adopt rules not
36 inconsistent with this subchapter regulating pharmacy benefits managers with

1 regard to professional, public health, and public safety issues.

2 (b) The Insurance Commissioner may adopt rules not inconsistent with
3 this subchapter regulating pharmacy benefits managers with regard to business
4 and financial issues.

5 (c) Rules adopted under this subchapter may set penalties including,
6 but not limited to, monetary fines, for violations of this subchapter and
7 rules adopted under this subchapter.

8
9 17-92-1107. Annual statement.

10 (a)(1) A pharmacy benefits manager doing business in Arkansas shall
11 file a statement with the commissioner annually by March 1.

12 (2) The statement shall be verified by at least two (2)
13 principal officers of the pharmacy benefits manager and shall cover the
14 preceding calendar year.

15 (b) The statement shall be on forms prescribed by the commissioner and
16 shall include:

17 (1) A financial statement of the organization, including its
18 balance sheet and income statement for the preceding year; and

19 (2) The number and dollar value of claims for pharmacist's
20 services processed by the pharmacy benefits manager during the preceding year
21 with respect to patients who are residents of Arkansas.

22 (c) If a pharmacy benefits manager is audited annually by an
23 independent certified public accountant, a copy of each certified audit
24 report shall be promptly filed with the commissioner.

25 (d)(1) The commissioner may extend the time prescribed for any
26 pharmacy benefits manager for filing annual statements or other reports or
27 exhibits for good cause shown.

28 (2) However, the commissioner may not extend the time for filing
29 annual statements beyond sixty (60) days after the time prescribed in this
30 section.

31 (3) Until the annual statement is filed, the commissioner may
32 revoke or suspend the license of a pharmacy benefits manager that fails to
33 file its annual statement within the time prescribed by this section.

34
35 17-92-1108. Assessment.

36 (a) The expense of administering this subchapter incurred by the

1 commissioner shall be assessed annually by the commissioner against all
2 pharmacy benefits managers operating in Arkansas.

3 (b) The commissioner shall assess each pharmacy benefits manager
4 annually for its share of the estimated commissioner's expenses with regard
5 to this subchapter in proportion to the business done in Arkansas, as
6 determined by the commissioner in the commissioner's reasonable discretion.

7 (c)(1) The commissioner shall give each pharmacy benefits manager
8 notice of the assessment, which shall be paid to the commissioner before
9 March 2 of each year.

10 (2) A pharmacy benefits manager that fails to pay the assessment
11 before March 2 of each year shall be subject to a penalty imposed by the
12 commissioner.

13 (3) The penalty shall be ten (10%) percent of the assessment
14 plus interest for the period between the due date and the date of full
15 payment.

16 (4) If a payment is made in an amount later found to be in
17 error, the commissioner shall:

18 (A) If an additional amount is due:

19 (i) Notify the pharmacy benefits manager of the
20 additional amount due; and

21 (ii) Order the pharmacy benefits manager to pay the
22 additional amount within fourteen (14) days of the date of the notice; or

23 (B) If an overpayment is made, order a refund to the pharmacy
24 benefits manager.

25 (d)(1) If an assessment made under this subchapter is not paid to the
26 commissioner by the prescribed date, the amount of the assessment, plus any
27 penalty, may be recovered from the defaulting pharmacy benefits manager on
28 motion of the commissioner made in the name, and for the use of, the State of
29 Arkansas in the Circuit Court of Pulaski County, after ten (10) days' notice
30 to the pharmacy benefits manager.

31 (2) The license of any defaulting pharmacy benefits manager to
32 transact business in Arkansas may be revoked or suspended by the commissioner
33 until the pharmacy benefits manager has paid the assessment.

34 (e) All fees assessed under this subchapter shall be deposited into
35 the State Treasury to the credit of the Pharmacy Benefit Managers Licensing
36 Fund created by § 17-92-1105.

1 (f) If a pharmacy benefits manager becomes insolvent or ceases to do
2 business in Arkansas in any assessable or license year, the pharmacy benefits
3 manager shall remain liable for the payment of the assessment for the period
4 in which it operated as a pharmacy benefits manager in Arkansas.

5
6 17-92-1109. Pharmacy benefits manager contracts.

7 (a)(1) A pharmacy benefits manager that contracts with a pharmacy or
8 pharmacist to provide pharmacist's services in Arkansas shall first inform
9 the pharmacy or pharmacist in writing of the number of, and other relevant
10 information concerning, patients to be served.

11 (2) There shall be a separate contract with each pharmacy or
12 pharmacist for each of the pharmacy benefits manager's provider networks.

13 (3) Contracts providing for indemnity of the pharmacy or
14 pharmacist shall be separate from contracts providing for cash discounts.

15 (4) A pharmacy benefits manager shall not require that a
16 pharmacy or pharmacist participate in one contract in order to participate in
17 another contract.

18 (b) Each pharmacy benefits manager shall provide contracts to the
19 pharmacies and pharmacists that are written in plain English, using terms
20 that will be generally understood by pharmacists.

21 (c) All contracts between a pharmacy benefits manager and a pharmacy
22 or pharmacist shall provide specific time limits for the pharmacy benefits
23 manager to pay the pharmacy, pharmacist, or both, for pharmacist's services
24 rendered.

25 (d)(1) No pharmacy benefits manager contract may mandate that any
26 pharmacy or pharmacist change a patient's maintenance drug unless the
27 prescribing practitioner so orders.

28 (2) No pharmacy benefits manager contract may mandate basic
29 record keeping by any pharmacy or pharmacist that is more stringent than
30 required by state or federal laws or regulations.

31 (e) A pharmacy benefits manager shall distribute all moneys the
32 pharmacy benefits manager receives for pharmacist's services to the
33 pharmacies and pharmacists who provided the pharmacist's services and shall
34 do so within seven (7) business days of receipt of such monies by the
35 pharmacy benefits manager.

36 (f)(1) A pharmacy benefits manager shall file its contract forms for

1 contracts with pharmacies or pharmacists to provide pharmacist's services in
2 Arkansas with the commissioner thirty (30) days before the first use of the
3 contract forms in Arkansas.

4 (2)(A) The contract forms are subject to approval by the
5 commissioner.

6 (B) If the commissioner does not approve the forms within
7 thirty (30) days of receipt, the forms shall be deemed disapproved.

8 (C) The commissioner shall develop formal criteria for the
9 approval and disapproval of pharmacy benefits manager contract forms.

10 (g)(1) A pharmacy benefits manager that initiates an audit of a
11 pharmacy or pharmacist under the contract shall limit the audit to methods
12 and procedures that are recognized as fair and equitable for both the
13 pharmacy benefits manager and the pharmacy, pharmacist, or both.

14 (2) Extrapolation calculations in an audit are prohibited.

15 (3) A pharmacy benefits manager may not recoup any moneys due
16 from an audit by setoff from future remittances until the results of the
17 audit are finalized.

18 (h) Before terminating a pharmacy or pharmacist from a pharmacy
19 benefits manager's provider network, the pharmacy benefits manager shall give
20 the pharmacy or pharmacist a written explanation of the reason for the
21 termination thirty (30) days before the actual termination unless the
22 termination is taken in reaction to:

23 (1) Loss of license;

24 (2) Loss of professional liability insurance; or

25 (3) Conviction of fraud or misrepresentation.

26 (i)(1) No pharmacy or pharmacist may be held responsible for acts or
27 omissions of a pharmacy benefits manager.

28 (2) No pharmacy benefits manager may be held responsible for the
29 acts or omissions of a pharmacy or pharmacist.

30
31 17-92-1110. Enforcement.

32 (a)(1) Enforcement of this subchapter shall be the responsibility of
33 the board and the commissioner.

34 (2) The board, the commissioner, or both, shall take action or
35 impose appropriate penalties to bring a noncomplying pharmacy benefits
36 manager into full compliance with this subchapter or shall terminate the

1 pharmacy benefits manager's certificate of authority or license.

2 (b)(1) The board and the commissioner shall each adopt procedures for
3 formal investigation of complaints concerning the failure of a pharmacy
4 benefits manager to comply with this subchapter.

5 (2)(A) The commissioner shall refer a complaint received under
6 this subchapter to the board if the complaint involves a professional or
7 patient health or safety issue.

8 (B) The board shall refer a complaint received under this
9 subchapter to the commissioner if the complaint involves a business or
10 financial issue.

11 (3)(A) If the board or the commissioner has reason to believe
12 that there may have been a violation of this subchapter, the board or
13 commissioner shall issue and serve upon the pharmacy benefits manager a
14 statement of the charges and a notice of a hearing.

15 (B) The hearing shall be held at a time and place fixed in
16 the notice, and not be less than thirty (30) days after the notice is served.

17 (C) At the hearing, the pharmacy benefits manager shall
18 have an opportunity to be heard and to show cause why the board or the
19 commissioner should not:

20 (i) Issue a cease and desist order against the
21 pharmacy benefits manager; or

22 (ii) Take any other necessary or appropriate action,
23 including, but not limited to, termination of the pharmacy benefits manager's
24 certificate of authority or license.

25 (c)(1) The board may conduct an investigation concerning the quality
26 of services of any pharmacy benefits manager, pharmacy, or pharmacist with
27 whom the pharmacy benefits manager has contracts, as the board deems
28 necessary for the protection of the interests of the residents of Arkansas.

29 (2) In addition to applying penalties and remedies under this
30 subchapter for a pharmacy benefits manager's violation of this subchapter,
31 the board may also apply penalties and remedies under any other subchapter of
32 Arkansas Code Title 17, Chapter 92 for violation of that chapter.

33
34 17-92-1111. Medication Reimbursement Costs.

35 (a) Pharmacy benefits managers shall use a current nationally
36 recognized benchmark to base reimbursements for medications and products

1 dispensed by pharmacies or pharmacists with whom the pharmacy benefits
2 manager contracts as follows:

3 (1) For brand single source drugs and brand multi source drugs,
4 either the Average Wholesale Price as listed in First Data Bank, Hearst
5 Publications, or Facts & Comparisons, formerly Medispan, shall be used as an
6 index;

7 (2) For generic multi source drugs, maximum allowable costs
8 shall be established by referencing the Baseline Price as listed in either
9 First Data Bank or Facts & Comparisons;

10 (3) Only products that are in compliance with pharmacy laws as
11 equivalent and generically interchangeable with a United States Food and Drug
12 Administration Orange Book rating of "A" may be reimbursed from a maximum
13 allowable cost price methodology;

14 (4) If a generic multi source drug product has no baseline
15 price, then it shall be treated as a brand single source drug for the purpose
16 of valuing reimbursement.

17 (b) If the publications specified in subsection (a) of this section
18 cease to be nationally recognized benchmarks used to base reimbursement for
19 medications and products dispensed by pharmacies and pharmacists, other
20 current nationally recognized benchmarks, as are then current and in effect,
21 may be utilized so long as the benchmark is established and published by a
22 person, business, or other entity with which no pharmacy benefits manager has
23 a financial or business interest or connection.

24
25 17-92-1112. Prohibited practices.

26 (a) No pharmacy benefits manager, or representative of a pharmacy
27 benefits manager, may cause or knowingly permit the use of any advertisement,
28 promotion, solicitation, proposal or offer that is untrue, deceptive or
29 misleading.

30 (b) No pharmacy benefits manager may discriminate on the basis of
31 race, creed, color, sex, or religion in the selection of pharmacies or
32 pharmacists with which the pharmacy benefits manager contracts.

33 (c) No pharmacy benefits manager may unreasonably discriminate against
34 or between pharmacies or pharmacists.

35 (d)(1) A pharmacy benefits manager shall be entitled to access a
36 pharmacy's or pharmacist's usual and customary price only for comparison to

1 specific claims for payment made by the pharmacy or pharmacist to the
2 pharmacy benefits manager.

3 (2) Usual and customary pricing is confidential and any other
4 use or disclosure by the pharmacy benefits manager is prohibited.

5 (e)(1) Claims for pharmacist's services paid by a pharmacy benefits
6 manager may not be retroactively denied or adjusted after adjudication of the
7 claims, unless:

8 (A) The original claim was submitted fraudulently;

9 (B) The original claim payment was incorrect because the
10 pharmacy or pharmacist had already been paid for the pharmacist's services;
11 or

12 (C) The pharmacist's services were not, in fact, rendered
13 by the pharmacy or pharmacist;

14 (2) No acknowledgement of eligibility may be retroactively
15 reversed.

16 (f) No pharmacy benefits manager may terminate a contract with a
17 pharmacy or pharmacist, or terminate, suspend or otherwise limit the
18 participation of a pharmacy or pharmacist in a pharmacy benefits manager's
19 provider network, because:

20 (1) The pharmacy or pharmacist expresses disagreement with the
21 pharmacy benefits manager's decision to deny or limit benefits to a patient;

22 (2) The pharmacist discusses with a patient any aspect of the
23 patient's medical condition or treatment alternatives;

24 (3) The pharmacist makes personal recommendations regarding
25 selecting a pharmacy benefits manager based on the pharmacist's personal
26 knowledge of the health needs of the patient;

27 (4) The pharmacy or pharmacist protests or expresses disagreement
28 with a decision, policy, or practice of the pharmacy benefits manager;

29 (5) The pharmacy or pharmacist has, in good faith, communicated
30 with or advocated on behalf of, any patient related to the needs of the
31 patient regarding the method by which the pharmacy or pharmacist is
32 compensated for services provided under the contract with the pharmacy
33 benefits manager;

34 (6) The pharmacy or pharmacist complains to the board or
35 commissioner that the pharmacy benefits manager has failed to comply with
36 this subchapter; or

